IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 22 OF 2004

State of Goa ... Applicant/Complainant

versus

Dinesh Naik,
St. Cruz, Aradi Band,
H.No.199, E native of vaigantal,
Taluka Dodamarg, ahead of Bheshi. ... Respondent /Accused

Ms. W. Coutinho, Additional Public Prosecutor for the Applicant.

Mr. J. Godinho, Advocate for the Respondent.

CORAM: N. A. BRITTO, J.

DATE : 25TH NOVEMBER,2004 .

ORAL ORDER

Heard learned Additional Public Prosecutor Ms. W. Coutinho, on behalf of the Applicant/State, and learned Counsel Mr. J. Godinho, on behalf of the Respondent/Accused.

2. It appears that the said accused was prosecuted by the Police on a charge-sheet filed with allegation that on 24-5-2003, at about 11.30 hours to 12.00 hours, at Nachinola, the accused asked the victim who was going on a motor cycle to stop the motor cycle

and then fired at him with a gun, due to which the said victim sustained bullet injury and thereafter the accused stole away the motor cycle No. GA 01 V 2697 on which the said victim was proceeding. The said charge-sheet, as can be seen from the impugned Order dated 30-6-2004 of the learned IInd Adhoc Assistant Sessions Judge, Panaji, was filed under Sections 307, 397 IPC and Section 3 of the Arms Act, 1959.

3. The learned IInd Adhoc Assistant Sessions Judge, Panaji, by his said Order dated 30-6-2004, proceeded to frame charge against the accused under Sections 307 and 397 I.P.C. but refrained from framing charge against the accused under Section 3 of the Arms Act, 1959, on the ground that no sanction of the District Magistrate was obtained to prosecute the accused under the Arms Act, 1959 and it is against this part of the Order that the present revision has been filed.

4. Section 3 of the Arms Act, 1959(Act, for short) provides that no person shall acquire, have in his possession, or carry any fire arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder:

Provided that a person may, without himself holding a licence, carry any firearm or ammunition in the presence, or under

the written authority, of the holder of the licence for repair or for renewal of the licence or for use by such holder.

Sub-Section 2 of Section 3 further provides that notwithstanding anything contained in sub-section (1), no person, other than a person referred to in sub-section (3), shall acquire, have in his possession or carry, at any time, more than three firearms:

Provided that a person who has in his possession more firearms than three at the commencement of the Arms(Amendment) Act, 1983, may retain with him any three of such firearms and shall deposit, within ninety days from such commencement, the remaining firearms with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub-section (1) of Section 21, with a licensed dealer, or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub-section. Sub-Sections (3) and (4) of Section 3 of the Act would not be relevant for our purpose.

5. Chapter V of the Act deals with Offences and Penalties, and, Section 25 deals with punishment for certain offences and Clause (a) of sub-section (1-B) provides that whoever acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3 shall be punishable with imprisonment for a term which

shall not be less than one year but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

6. Section 39 of the Act makes previous sanction of the District Magistrate necessary in certain cases, and, provides that no prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate.

7. Apparently, the prosecution wanted the Court to frame a charge against the accused under Section 25(1-B)(a) r/w Section 3 of the Act against the accused for having used the firearm without possessing a valid licence. However, the prosecution were unable to produce a previous sanction issued by the District Magistrate which was a sine quo non for the prosecution under the said Sections of the Act.

8. It has been submitted by Mr. J. Godinho, learned Counsel of the accused that the I.O. was unable to obtain such a sanction from the learned District Magistrate. It has been submitted by Ms. W. Coutinho, learned Additional Public Prosecutor that absence of

sanction will affect the very prosecution of the case, under other offences for which the accused has been charged. In my opinion, the submission of the learned Additional Public Prosecutor, Ms. Coutinho is wholly misplaced. Whether the prosecution applied for a sanction of the District Magistrate or whether the same was refused because ultimately the gun allegedly used by the accused was not traced, the fact remains that at the time when the charge-sheet was filed or for that matter, the impugned Order was passed, the prosecution was not armed with a sanction order issued by the District Magistrate under Section 39 of the Act and in the absence of the same the learned Assistant Sessions Judge was justified in not framing the charge for offences under the Arms Act, 1959. Therefore, the impugned Order cannot be faulted. This Petition, therefore, deserves to be dismissed.

9. Regarding the maintainability of this revision before this Court, the learned Additional Public Prosecutor Ms. Coutinho, has not explained as to why the forum of the Court of Sessions has been by-passed. Ms. Coutinho, submits that in terms of Section 397 of the Code of Criminal Procedure(Code, for short) this Court has also jurisdiction to entertain the revision petition and, therefore, the same be decided by this Court or in the alternative the revision petition be directed to be returned to be filed before the Court of Sessions, saving the time of limitation, to file the same.

10. There can be no dispute that in terms of Section 397 of the Code the powers of revision can be exercised by this Court as well as the Court of Sessions. Having powers to exercise is one thing but to exercise them or not in a given case is quite another thing.

12. The explanation below sub-section(1) of Section 397 of the Code provides that all Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398. Section 10 of the Code provides that all Assistant Sssions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction. The word “inferior”, in the aforesaid explanation below sub-section (1) of Section 397 of the Code and the word “subordinate” under sub-section(1) of sub-section (10) of the Code as per their ordinary dictionary meaning, mean lower in rank and, therefore, it is obvious that the revisional powers of the Sessions Court against the orders passed by the Assistant Sessions Judges are not affected by any provision of the Code. In fact, even Section 374(3)(a) provides that an appeal against conviction by an Assistant Sessions Judge has got to be preferred to the Court of Sessions. The Code apparently creates no bar for the Court of Sessions to entertain a revision against an order passed by an Assistant Sessions Judge in case such an order passed by an Assistant Sessions Judge is otherwise revisable. Although, this Court has concurrent revisional powers along with the Court of Sessions, it

has not been a practice of this Court to exercise revisional powers, by by-passing the Court of Sessions, unless there are exceptional circumstances.

13. In the case of **Tejram Gaikwad** v. **Smt. Sunanda Tejram Gaikwad and others** (1996 Cri.L.J. 172) this Court held that the revision application deserves to be dismissed on the ground that the applicant had not filed the criminal revision before the Sessions Judge, having jurisdiction over the matter. It is undoubtedly true that Section 397 of the Code confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two courts, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional grounds for taking the matter directly before the superior Court is made out. Since the applicant had directly come to the High Court, though he could have filed the revision before the Sessions Judge and there were no exceptional reasons, the revision application deserved to be dismissed on that count alone. The Court further held that the Court did not encourage filing of revision application under Section 397 of the Code directly before this Court if it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter.

14. The same view was again followed by this Court in the case of **Padmanabh Keshav Kamat** v. **Anup R. Kantak and others**

(1999 Cri.L.J. 122) wherein this Court held that although a revision application filed directly to the High Court is maintainable in the absence of a special or exceptional circumstance requiring to by-pass the forum of Sessions Judge, the High Court should not entertain the same. As said before no case has been made out to justify the by-passing of the Court of Sessions in filing the revision and filing the same directly before this Court.

15. This revision, therefore, deserves to be dismissed on both counts and accordingly is hereby dismissed.

N. A. BRITTO, J.

RD.